



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2020-0090; Notice 2]**

### **Nissan North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of  
Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Nissan North America, Inc. (Nissan) has determined that certain replacement windshield glass panes manufactured by Central Glass Co., Ltd., outsourced to Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for use in certain Nissan motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. Nissan filed a noncompliance report dated June 29, 2020. Nissan subsequently petitioned NHTSA on July 29, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces grant of Nissan's petition.

**FOR FURTHER INFORMATION CONTACT:** Jack Chern, Office of Vehicle Safety  
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### **SUPPLEMENTARY INFORMATION:**

#### **I. Overview:**

Nissan has determined that certain replacement windshield glass panes manufactured by Central Glass Co., Ltd., outsourced to Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for use in certain Nissan motor vehicles do not fully comply with the

requirements of paragraph S6.2 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205).

Nissan filed a noncompliance report dated June 29, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Nissan subsequently petitioned NHTSA on July 29, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Nissan's petition was published with a 30-day public comment period, on April 13, 2021, in the **Federal Register** (86 FR 19319). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2020-0090."

## **II. Windshields Involved**

Approximately 1,934 replacement windshield glass panes sold as replacement service parts, manufactured between April 1, 2000, and April 30, 2012, are potentially involved. These replacement windshield glass panes were manufactured by Central Glass Co., Ltd., who subsequently outsourced to a subsidiary company, Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for Nissan motor vehicles.

## **III. Noncompliance**

Nissan stated that the glass manufacturer, Central Glass Co., Ltd., outsourced glass production to a subsidiary company, Japan Tempered & Laminated Glass Co., Ltd. (JTLG), in April 2000. Instead of using its own certification mark "166," JTLG used the certification mark "44," which is assigned to its parent company, Central Glass Co.

## **IV. Rule Requirements**

Paragraph S6.2 of FMVSS No. 205 includes the requirements that a prime glazing manufacturer add a manufacturer's code mark, that NHTSA assigns to the manufacturer, to its glazing.

## **V. Summary of Nissan's Petition**

The following views and arguments presented in this section, "V. Summary of Nissan's Petition," are the views and arguments provided by Nissan and do not reflect the views of the Agency. Nissan describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Nissan offers the following reasoning:

1. Nissan states that although the manufacturer's code mark is incorrect, the certification mark affixed to the subject parts features the correct AS Item number and model number. In addition, the windshield glass panes were fabricated in full compliance with the technical requirements of 49 CFR 571.205 applicable to laminated glass for use in motor vehicles.
2. Nissan says that many of the 1,934 windshield glass components that may contain an incorrect manufacturer's code mark are located in non-U.S. markets. For this reason, Nissan believes the actual number of subject parts is substantially lower than the 1,934 possible windshield glass panes because only a small number of potentially affected windshield glass panes were shipped to the U.S. market for use as service parts between April 1, 2000, and April 30, 2012.
3. Nissan also states that the part number remains accurate, despite the manufacturer's code mark discrepancy. The subject noncompliance, accordingly, is unlikely to result in the use of an incorrect replacement part in an OEM application because the part would be ordered using Nissan's unique part number and not the "DOT" number. In Nissan's ordering system, parts with the incorrect manufacturer's code mark are indistinguishable from parts with the correct code. In fact, the parts are traceable to

Central Glass Co., Ltd., since the incorrect code used by their subsidiary, JLTG, is the code for the parent company, Central Glass Co., Ltd.

4. Nissan believes that there is a low likelihood of a vehicle requiring this replacement part because the average age of potentially affected vehicles (MY 1991–1999) is 25+ years old. Currently, only one replacement windshield glass service part (727120M010) is in stock and available. However, Nissan instructed the Sagamihara Part Center in Japan to suspend shipment for this part. Even so, if a vehicle previously received or were to receive a subject replacement part, the part fully complies with the technical requirements of 49 CFR §571.205. In no way is the actual safety aspect of the windshield glass compromised by the misprinted manufacturer's code mark.
5. Nissan contends that in similar situations, NHTSA has granted the applications of other petitioners. For example, 80 FR 3737 (January 23, 2015) Petition by Custom Glass Solutions Upper Sandusky Corporation. Nissan cited NHTSA, saying “NHTSA believes that the subject labeling errors are inconsequential to motor vehicle safety because the marking of glazing as ‘Tempered’ or ‘Laminated’ is not required by FMVSS No. 205, the probability of anyone in the United States obtaining the subject incorrectly marked glazing as replacement glazing is very unlikely since the affected glazing is specifically designed for use in mining vehicles manufactured by Atlas Copco in Australia. In addition, there is no concern that the wrong model number on the subject glazing would result in an incorrect replacement part being used because replacement parts are ordered by referring to the glazing part number or by identifying the vehicle for which the replacement glazing is intended.”

Nissan concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing

notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

## **VI. NHTSA's Analysis**

### **1. General Principles**

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have not justified granting an inconsequentiality petition.<sup>1</sup> Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant or a consumer who is exposed to the consequence of that noncompliance.<sup>2</sup> These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

### **2. Response to the arguments from Nissan**

Paragraph S6.2 of FMVSS No. 205 requires a prime glazing manufacturer to mark its glazing with a manufacturer's code mark that NHTSA assigns to the manufacturer.

Nissan pointed out that many of the subject 1,934 windshield glass components that may contain an incorrect manufacturer's code mark are located in non-U.S. markets. As previously stated, NHTSA does not consider arguments that the noncompliance involves only a small number of items of motor vehicle equipment when determining whether the noncompliance is inconsequential to motor vehicle safety. Instead, NHTSA considers the consequences of the noncompliance and how that may impact a consumer exposed to it. For purposes of this petition,

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<sup>1</sup> See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

<sup>2</sup> See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

NHTSA considered whether the noncompliance impacted the functional safety of the impacted windshield and also whether the noncompliance would impact any potential future recalls.

First, as part of NHTSA's consideration of Nissan's petition, NHTSA reviewed information submitted by Nissan in support of its statements that the subject windshields met all of the applicable performance requirements specified in FMVSS No. 205. Based on its review of the test data submitted by Nissan, NHTSA believes that Nissan's certifications of the safety performance of the subject windshields were made based on reasonable bases. Accordingly, NHTSA has no reason to believe that the windshields are otherwise noncompliant with the performance requirements in FMVSS No. 205.

Second, NHTSA considered whether the noncompliance could impact the efficiency of a recall if the affected windshields were subject to one. Based on the information presented, NHTSA believes that if the affected windshields were subject to a future recall, Nissan or consumers would be able to identify the affected windshields in order to have the recall completed. This is because, while the marking does not identify the fabricating manufacturer, it does identify the parent company and the correct model number and would, therefore, be traceable to an entity who would accept responsibility for conducting a recall. Based on the foregoing reasons, NHTSA does not believe the noncompliance poses a consequential risk to motor vehicle safety.

NHTSA also requested that Nissan provide information about what Nissan, Central Glass Co., Ltd., and Japan Tempered & Laminated Glass Co., Ltd. (JTLG) are doing to ensure this type of noncompliance does not happen again. Nissan responded that Central Glass Co. has informed Nissan that in the time since this issue took place, change management policies have been implemented, with all new changes to products now being reviewed by the Central Glass HQ quality assurance department for approval. Additionally, JTLG also reviewed U.S. certification and marking requirements and made updates to their own processes, where appropriate, to ensure

future compliance. Nissan states that any future manufacturing process changes would be detected and corrected prior to production.

## **VII. NHTSA's Decision**

In consideration of the foregoing, NHTSA finds that Nissan has met its burden of persuasion that the subject FMVSS No. 205 noncompliance in the affected windshield glass panes is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby granted and Nissan is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles and equipment that Nissan no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle and equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles and replacement windshield glass panes under their control after Nissan notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

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